

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

J. CLARKE STEVENS ET AL.

Serial No.: 09/396,612

Filed: September 15, 1999

For: METHOD AND SYSTEM FOR AUTOMATING INVENTORY
MANAGEMENT OF CONSUMER ITEMS

Attorney Docket No.: MEDO 5016 PUS

Group Art Unit: 3627

Examiner: G. O'Connor

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a revised Appeal Brief in support of the appeal from the final rejection of claims 1-8 and 10 in the Office Action dated December 9, 2002 and in response to the notification of non-compliant appeal brief mailed September 29, 2006.

I. REAL PARTY IN INTEREST

The real party in interest is Comcast Cable Holdings, LLC (successor in interest to MediaOne Group, Inc.), a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 1500 Market Street, 34th Floor, Philadelphia, PA 19102. Comcast Cable Holdings, LLC is the successor in interest to MediaOne Group, Inc. via the merging of MediaOne Group and AT&T, the creation of a new company to represent AT&T Broadband, the spin-off of AT&T Broadband and merger of AT&T Broadband with

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Comcast, which holds its interest in this application in Comcast Cable Holdings, LLC. An Assignment from the named inventors to MediaOne Group, Inc. was recorded in the United States Patent and Trademark Office on September 9, 1999, at Reel 010261, Frame 0344.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals, interferences or judicial proceedings known to the Appellants, the Appellants' legal representative, or the Assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-8 and 10-23 are pending in this application. Claims 1-8 and 10 have been rejected and are the subject of this appeal. Claim 9 has been canceled. Claims 11-23 have been withdrawn from consideration.

IV. STATUS OF AMENDMENTS

An amendment after final rejection was filed on April 3, 2003 and has been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a method for automating the management of an inventory of consumer items at a consumer location. Page 1, ll. 4-5.

As best illustrated by Figure 10, independent claim 1 recites a method for automating the management of an inventory of consumer items at a consumer location using a programmed device 150 accepting input data and executing instructions for automating inventory management. The method comprises receiving a series of shopping lists 170. Each shopping list 170 includes at least one item. The method further comprises establishing a

shopping list trend 152 based on the series of shopping lists 170. The method further comprises generating an output list 154 in accordance with the shopping list trend 152 such that the output list 154 is predictive of a next shopping list 156. Page 2, ll. 1-9; page 2, lines 23-25. Claim 1 further recites receiving a plurality of item price lists 182 from a corresponding plurality of shopping locations 180. (Figure 7, block 112.) Claim 1 further recites recommending a shopping location 180 based on the plurality of item price lists 182 and the output list 154. (Figure 7, block 114.) Page 3, ll. 9-12.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-8 and 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. (U.S. Patent No. 5,664,110).

Claims 1-8 and 10 stand rejected under 35 U.S.C. 102(e) as being anticipated by Kenney (U.S. Patent No. 6,026,376).

Claims 1-8 and 10 stand rejected under 35 U.S.C. 102(e) as being anticipated by Petrovich et al. (U.S. Patent No. 6,101,483).

VII. ARGUMENT

A. Claims 1-8 and 10 Are Patentable Under 35 U.S.C. § 102(b) Over U.S. Patent No. 5,664,110

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Green describes a remote ordering system. Green does not describe or suggest, for example, establishing a shopping list trend and generating an output list in accordance with the shopping list trend in combination with the other limitations recited by independent claim 1. Green only discusses custom reference lists (Col. 3, ll. 51-58). The custom reference lists discussed in Green appear to be fixed customizable lists that are not generated in accordance with an established shopping list trend as recited by independent claim 1. The claimed elements lacked by Green are not inherently described in Green as it appears that Green describes only fixed customizable lists that are not generated in accordance with an established shopping list trend. In the final rejection (paper no. 11), the Examiner responds to Appellants' arguments by referencing Col. 3, ll. 45-63 of Green. This portion of Green does refer to regularly ordered perishables, regularly ordered office products, and regularly ordered dairy products. However, there is no suggestion, either expressly or inherently, that a shopping list trend is established and an output list is generated in accordance with the shopping list trend as recited, in combination with other limitations, by claim 1. Green only describes custom reference lists which appear to be fixed customizable lists that are not generated in accordance with an established shopping list trend. For these reasons, Green does not anticipate claim 1, and claim 1 is believed to be patentable.

Claims 2-8 and 10 recite various additional features that are believed to be further patentable subject matter. The Examiner has failed to point out specific teachings in the prior art of these various claimed features, let alone any suggestion of using the recited features in the particular combinations claimed. For these reasons, the Examiner has not made a prima facie case that these claims are anticipated, and Appellants believe that these claims are patentable. Appellants point out that claims 2-8 and 10 recite various additional features. Appellants also point out that for each of these claims, the Examiner has failed to point out a teaching of the additional recited features. Because the Examiner, for each of these claims, has failed to point out a teaching of the additional recited features, these claims are believed to be separately patentable.

**1. Claim 2 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 2, Green fails to further suggest “wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;
storing information indicative of the shopping list on a data storage medium; and
thereafter, retrieving the information from the data storage medium.”

The Examiner has offered no specific remarks regarding this rejection of claim 2. Green fails to suggest these additional features. Green does describe recallable sublists; however, there appears to be no teaching of the claimed feature involving storing and retrieving shopping list information from a data storage medium as part of receiving a shopping list as a series of shopping lists.

**2. Claim 3 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 3, Green fails to further suggest “wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;
sending information indicative of the shopping list over a network; and
receiving the information from the network.”

The Examiner has offered no specific remarks regarding this rejection of claim 3. Green fails to suggest these additional features. Green does describe recallable sublists; however, there appears to be no teaching of the claimed features involving sending and receiving shopping list information with a network as part of receiving a shopping list as a series of shopping lists.

**3. Claim 4 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 4, Green fails to further suggest “receiving at least one consumed item list including at least one item that has been consumed, wherein the shopping list trend is further based on the at least one consumed item list.”

The Examiner has offered no specific remarks regarding this rejection of claim 4. Green fails to suggest these additional features. There appears to be no teaching of the shopping list trend feature, let alone any teaching of this further aspect of the shopping list trend feature where the trend is further based on the at least one consumed item list.

**4. Claim 5 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 5, Green fails to further suggest “wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof, the item having a tag and the item being identified by recognizing the tag.”

The Examiner has offered no specific remarks regarding this rejection of claim 5. Green fails to suggest these additional features. There appears to be no specific teaching of the shopping list trend feature, let alone any suggestion of this further more detailed aspect wherein item consumption is identified based on item tags.

**5. Claim 6 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 6, Green fails to further suggest “wherein the tag is a bar code and the tag is recognized by scanning the bar code.”

The Examiner has offered no specific remarks regarding this rejection of claim 6. Green fails to suggest these additional features. According to claim 6, the tag used for recognizing an item upon consumption thereof for building the consumed item list that is used to generate the shopping list trend is a bar code tag. This is a specific application of bar code tags, and there appears to be no teaching of this claimed feature in the claimed combination in Green.

**6. Claim 7 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 7, Green fails to further suggest “wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof by recognizing the item with a camera.”

The Examiner has offered no specific remarks regarding this rejection of claim 7. Green fails to suggest these additional features. In this aspect of the invention, a camera is used to identify an item upon consumption for building the consumed item list that is used in establishing the shopping list trend. Green does not appear to teach this feature.

**7. Claim 8 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 8, Green fails to further suggest “comparing the output list with the next shopping list; and

modifying the shopping list trend based on the comparison.”

The Examiner has offered no specific remarks regarding this rejection of claim 8. Green fails to suggest these additional features. Again, Green does describe recallable sublists; however, there appears to be no teaching of this particular aspect of the shopping list

trend that involves modifying the shopping list trend based on a comparison of the output list and the next shopping list.

**8. Claim 10 Is Separately Patentable Under
35 U.S.C. 102(b) Over U.S. Patent No. 5,664,110**

Regarding claim 10, Green fails to further suggest “wherein generating the output list further comprises:

receiving an item list for a recipe; and
generating the output list further based on the item list for the recipe.”

The Examiner has offered no specific remarks regarding this rejection of claim 10. Green fails to suggest these additional features. In this aspect of the invention, the output list is further based on an item list for a recipe in combination with the other claim limitations. Green does not appear to teach this feature.

***B. Claims 1-8 and 10 Are Patentable Under 35 U.S.C. § 102(e)
Over U.S. Patent No. 6,026,376***

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Kenney describes an interactive electronic shopping system and method. Kenney does describe a virtual shopping facility. However, Kenney does not describe or suggest establishing a shopping list trend and generating an output list in accordance with the shopping list trend in combination with the other limitations recited by independent claim 1. The Examiner has failed to point out any specific teachings of the recited limitations of claim 1, and Kenney fails to anticipate claim 1.

Claims 2-8 and 10 recite various additional features that are believed to be further patentable subject matter. The Examiner has failed to point out specific teachings in the prior art of these various claimed features, let alone any suggestion of using the recited features in the particular combinations claimed. For these reasons, the Examiner has not made a prima facie case that these claims are anticipated, and Appellants believe that these claims are patentable. Appellants point out that claims 2-8 and 10 recite various additional features. Appellants also point out that for each of these claims, the Examiner has failed to point out a teaching of the additional recited features. Because the Examiner, for each of these claims, has failed to point out a teaching of the additional recited features, these claims are believed to be separately patentable.

**1. Claim 2 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 2, Kenney fails to further suggest “wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;
storing information indicative of the shopping list on a data storage medium; and
thereafter, retrieving the information from the data storage medium.”

The Examiner has offered no specific remarks regarding this rejection of claim 2. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 2 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**2. Claim 3 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 3, Kenney fails to further suggest “wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;
sending information indicative of the shopping list over a network; and
receiving the information from the network.”

The Examiner has offered no specific remarks regarding this rejection of claim 3. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 3 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**3. Claim 4 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 4, Kenney fails to further suggest “receiving at least one consumed item list including at least one item that has been consumed, wherein the shopping list trend is further based on the at least one consumed item list.”

The Examiner has offered no specific remarks regarding this rejection of claim 4. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 4 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**4. Claim 5 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 5, Kenney fails to further suggest “wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof, the item having a tag and the item being identified by recognizing the tag.”

The Examiner has offered no specific remarks regarding this rejection of claim 5. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 5 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**5. Claim 6 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 6, Kenney fails to further suggest “wherein the tag is a bar code and the tag is recognized by scanning the bar code.”

The Examiner has offered no specific remarks regarding this rejection of claim 6. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 6 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**6. Claim 7 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 7, Kenney fails to further suggest “wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof by recognizing the item with a camera.”

The Examiner has offered no specific remarks regarding this rejection of claim 7. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 7 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**7. Claim 8 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 8, Kenney fails to further suggest “comparing the output list with the next shopping list; and
modifying the shopping list trend based on the comparison.”

The Examiner has offered no specific remarks regarding this rejection of claim 8. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 8 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**8. Claim 10 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,026,376**

Regarding claim 10, Kenney fails to further suggest “wherein generating the output list further comprises:
receiving an item list for a recipe; and
generating the output list further based on the item list for the recipe.”

The Examiner has offered no specific remarks regarding this rejection of claim 10. Kenney fails to suggest these additional features. Although Kenney describes an electronic shopping system, claim 10 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**C. Claims 1-8 and 10 Are Patentable Under 35 U.S.C. § 102(e)
Over U.S. Patent No. 6,101,483**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Petrovich describes a personal shopping system portable terminal. However, Petrovich does not describe or suggest establishing a shopping list trend and generating an output list in accordance with the shopping list trend in combination with the other limitations recited by independent claim 1. The Examiner has failed to point out any specific teachings of the recited limitations of claim 1, and Petrovich fails to anticipate claim 1.

Claims 2-8 and 10 recite various additional features that are believed to be further patentable subject matter. The Examiner has failed to point out specific teachings in the prior art of these various claimed features, let alone any suggestion of using the recited features in the particular combinations claimed. For these reasons, the Examiner has not made a prima facie case that these claims are anticipated, and Appellants believe that these claims are patentable. Appellants point out that claims 2-8 and 10 recite various additional features. Appellants also point out that for each of these claims, the Examiner has failed to point out a teaching of the additional recited features. Because the Examiner, for each of these claims,

has failed to point out a teaching of the additional recited features, these claims are believed to be separately patentable.

1. Claim 2 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483

Regarding claim 2, Petrovich fails to further suggest “wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;
storing information indicative of the shopping list on a data storage medium; and
thereafter, retrieving the information from the data storage medium.”

The Examiner has offered no specific remarks regarding this rejection of claim 2. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 2 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

2. Claim 3 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483

Regarding claim 3, Petrovich fails to further suggest “wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;
sending information indicative of the shopping list over a network; and
receiving the information from the network.”

The Examiner has offered no specific remarks regarding this rejection of claim 3. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 3 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**3. Claim 4 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483**

Regarding claim 4, Petrovich fails to further suggest “receiving at least one consumed item list including at least one item that has been consumed, wherein the shopping list trend is further based on the at least one consumed item list.”

The Examiner has offered no specific remarks regarding this rejection of claim 4. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 4 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**4. Claim 5 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483**

Regarding claim 5, Petrovich fails to further suggest “wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof, the item having a tag and the item being identified by recognizing the tag.”

The Examiner has offered no specific remarks regarding this rejection of claim 5. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 5 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**5. Claim 6 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483**

Regarding claim 6, Petrovich fails to further suggest “wherein the tag is a bar code and the tag is recognized by scanning the bar code.”

The Examiner has offered no specific remarks regarding this rejection of claim 6. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 6 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**6. Claim 7 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483**

Regarding claim 7, Petrovich fails to further suggest “wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof by recognizing the item with a camera.”

The Examiner has offered no specific remarks regarding this rejection of claim 7. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 7 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**7. Claim 8 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483**

Regarding claim 8, Petrovich fails to further suggest “comparing the output list with the next shopping list; and

modifying the shopping list trend based on the comparison.”

The Examiner has offered no specific remarks regarding this rejection of claim 8. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 8 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

**8. Claim 10 Is Separately Patentable
Under 35 U.S.C. 102(e) Over U.S. Patent No. 6,101,483**

Regarding claim 10, Petrovich fails to further suggest “wherein generating the output list further comprises:

receiving an item list for a recipe; and
generating the output list further based on the item list for the recipe.”

The Examiner has offered no specific remarks regarding this rejection of claim 10. Petrovich fails to suggest these additional features. Petrovich describes a portable terminal; however, claim 10 recites detailed aspects of the invention that are not merely inherent in the applied reference, and are not merely obvious variations of the shopping list trend feature.

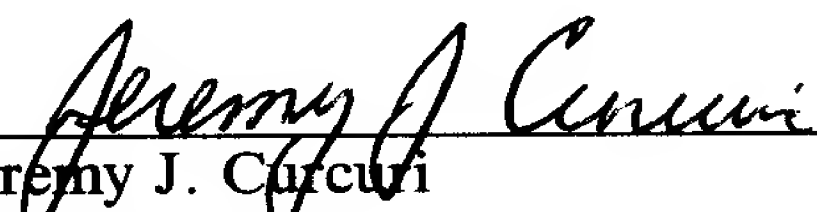
The Examiner has rejected claims 1-8 and 10 based on Green, Kenney, and Petrovich. For each reference, the Examiner has failed to point out specific teachings of the elements set forth in the claims. Because the prior art fails to suggest the claimed invention, claims 1-8 and 10 are believed to be patentable. The rejection of claims 1-8 and 10 should be reversed.

Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

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Enclosure - Appendices

VIII. CLAIMS APPENDIX

1. A method for automating the management of an inventory of consumer items at a consumer location using a programmed device accepting input data and executing instructions for automating inventory management, the method comprising:

receiving a series of shopping lists, each shopping list including at least one item;

establishing a shopping list trend based on the series of shopping lists;

generating an output list in accordance with the shopping list trend such that the output list is predictive of a next shopping list;

receiving a plurality of item price lists from a corresponding plurality of shopping locations; and

recommending a shopping location based on the plurality of item price lists and the output list.

2. The method of claim 1 wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;

storing information indicative of the shopping list on a data storage medium; and

thereafter, retrieving the information from the data storage medium.

3. The method of claim 1 wherein receiving a shopping list of the series of shopping lists further comprises:

determining a shopping list of a shopping trip;

sending information indicative of the shopping list over a network; and

receiving the information from the network.

4. The method of claim 1 further comprising:
receiving at least one consumed item list including at least one item that has been consumed, wherein the shopping list trend is further based on the at least one consumed item list.

5. The method of claim 4 wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof, the item having a tag and the item being identified by recognizing the tag.

6. The method of claim 5 wherein the tag is a bar code and the tag is recognized by scanning the bar code.

7. The method of claim 4 wherein receiving the at least one consumed item list further comprises:

identifying an item upon consumption thereof by recognizing the item with a camera.

8. The method of claim 1 further comprising:
comparing the output list with the next shopping list; and
modifying the shopping list trend based on the comparison.

10. The method of claim 1 wherein generating the output list further comprises:
receiving an item list for a recipe; and
generating the output list further based on the item list for the recipe.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.